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AMENDED IN SENATE JUNE 3, 1997
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SENATE BILL

No. 779

Introduced by Senator Calderon

February 26, 1997

An act to amend Section 1218.5 of the Code of Civil Procedure, and to add Sections 293 and 294 to, and to add Part 2.5 (commencing with Section 3300) to Division 8 of, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as amended, Calderon. Custody and visitation enforcement.

Existing law requires a court to grant reasonable visitation rights to a parent in granting a child custody order unless the visitation would be detrimental to the best interest of the child. Existing law authorizes the granting of reasonable visitation rights to other persons, as specified.

This bill would enact the Custody and Visitation Enforcement Act, which would establish a pilot program in up

to 5 counties in each of which an Office of the Friend of the Court would be created for the purpose of enforcement of custody and visitation orders. The bill would require the Child Support Bureau of the State Department of Social Services and the Judicial Council to jointly administer this program and to maintain records of cases, as specified. The Office of the Friend of the Court in each pilot county would be required to perform specified duties in disputes concerning the denial of child custody or visitation rights or violations of custody or visitation orders, thereby imposing a state-mandated local program. The bill would require the Statewide Office of Family Court Services to formulate a makeup custody and visitation policy, *and guidelines for clarifying or modifying the terms and conditions of an order*, as specified. The bill would specify that funding for any duties imposed on governmental agencies by the bill shall be provided by federal funds received by the state under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The bill would provide that these provisions shall become operative only if federal funds are made available for their implementation and would prohibit the allocation of state funds for the purposes of the program.

The bill also would make organizational, clarifying changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 1218.5 of the Code of Civil Procedure is amended to read:

1218.5. (a) If the contempt alleged is for failure to pay child, family, or spousal support, each month for which payment has not been made in full may be alleged as a separate count of contempt and punishment imposed for each count proven. If the contempt alleged is for a violation of a custody or visitation order under Part 2.5 (commencing with Section 3300) of Division 8 of the Family Code or any other provision of law, each violation of the order may be alleged and punished as a separate contempt.

(b) If the contempt alleged is the failure to pay child, family, or spousal support, or is a violation of access time or a custody or visitation order under Part 2.5 (commencing with Section 3300) of Division 8 of the Family Code, the period of limitations for commencing a contempt action is three years from the date that the payment was due or the access time denied. If the action before the court is enforcement of another order under the Family Code, the period of limitations for commencing a contempt action is two years from the time that the alleged contempt occurred.

SEC. 2. Section 293 is added to the Family Code, to read:

293. In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to this code, or Sections 11350 to 11476.1, inclusive, of the Welfare and Institutions Code, the court shall order the following:

(a) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hours, for each count of contempt.

(b) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment

1 of the contemner up to 120 hours, for each count of
2 contempt.

3 (c) Upon the third or any subsequent finding of
4 contempt, the court shall order both of the following:

5 (1) The court shall order the contemner to serve a
6 term of imprisonment of up to 240 hours, and to perform
7 community service of up to 240 hours, for each count of
8 contempt.

9 (2) The court shall order the contemner to pay an
10 administrative fee, not to exceed the actual cost of the
11 contemner's administration and supervision, while
12 assigned to a community service program pursuant to this
13 subdivision.

14 SEC. 3. Section 294 is added to the Family Code, to
15 read:

16 294. (a) If the contempt alleged is for failure to pay
17 child, family, or spousal support, each month for which
18 payment has not been made in full may be alleged as a
19 separate count of contempt and punishment imposed for
20 each count proven. If the contempt alleged is for a
21 violation of a custody or visitation order under Part 2.5
22 (commencing with Section 3300) of Division 8 or any
23 other provision of law, each violation of the order may be
24 alleged and punished as a separate contempt.

25 (b) If the contempt alleged is the failure to pay child,
26 family, or spousal support, or is a violation of access time
27 or a custody or visitation order under Part 2.5
28 (commencing with Section 3300) of Division 8, the period
29 of limitations for commencing a contempt action is three
30 years from the date that the payment was due or the
31 access time denied. If the action before the court is
32 enforcement of another order under this code, the period
33 of limitations for commencing a contempt action is two
34 years from the time that the alleged contempt occurred.

35 SEC. 4. Part 2.5 (commencing with Section 3300) is
36 added to Division 8 of the Family Code, to read:

37



1 PART 2.5. THE CUSTODY AND VISITATION
2 ENFORCEMENT ACT
3

4 3300. It is the intent of the Legislature in establishing
5 this part that all custody and visitation orders be enforced
6 with the same vigor, commitment, and ease of access as
7 support orders.

8 3301. This part shall be known and may be cited as the
9 Custody and Visitation Enforcement Act.

10 3302. (a) The Child Support Bureau of the State
11 Department of Social Services and the Judicial Council
12 shall jointly have the responsibility for the Friend of the
13 Court program, which is hereby established in the State
14 of California as a pilot program.

15 (b) The pilot program shall be designed in
16 consultation with representatives of the California Judges
17 Association, the California State Bar, Family Law Section,
18 legislative staff, and representatives of advocacy groups
19 for fathers, mothers, and victims of domestic violence.
20 The pilot program shall be designed to include counties
21 from different parts of the state, with at least one rural
22 and one suburban county and with at least one county
23 which currently has a family law facilitator program in
24 operation, but shall consist of no more than five pilot
25 counties.

26 (c) Funding for any additional duties imposed by this
27 part shall be provided by federal funds received pursuant
28 to the Federal Personal Responsibility and Work
29 Opportunity Reconciliation Act of 1996.

30 (d) The pilot program shall go into effect within six
31 months of the date of approval of the program by the
32 federal government and shall continue so long as federal
33 funding is available for the program.

34 (e) The department and the Judicial Council shall
35 evaluate and annually report to the Legislature on the
36 Friend of the Court program.

37 3303. (a) In each pilot county, an Office of the Friend
38 of the Court is hereby created. *Each Office of the Friend*
39 *of the Court shall be made up of both an enforcement unit*
40 *and a mediation unit.* Personnel of the office of family

1 court services in each county shall staff the office for the
2 purposes of mediation, evaluation, and recommendation
3 as to the best interests of the child as relates to violations
4 of visitation and custody orders. A county that currently
5 does not provide recommendations following mediation
6 to do evaluations and make recommendations regarding
7 custody or visitation is not required to do so by this part.

8 (b) The department and the Judicial Council shall do
9 all of the following:

10 (1) Set up policies for the coordination of activities and
11 cooperation between the units of the Friend of the Court
12 pilot program and existing court structures to enable
13 them to meet the goals of this part.

14 (2) Establish a makeup custody and visitation policy
15 *and guidelines to be used for clarifying or modifying any*
16 *other terms and conditions of an order* to be used in each
17 county.

18 (3) Establish a method for maintaining and evaluating
19 the information obtained under Section 3312.

20 (4) Establish any rules, regulations, or forms,
21 consistent with the provisions of this part, which are
22 deemed necessary to implement the pilot program *and*
23 *which are consistent with the requirements of due*
24 *process and existing law.*

25 3304. “Access time” means any time, whether custody
26 or visitation, including supervised visitation, in which a
27 person has a right to a specified period of time in which
28 a child or children is in his or her care, custody, and
29 control, whether obtained by a stipulation or by ~~a finding~~
30 *an order* of the court. “Order” means any aspect of a
31 custody or visitation order including, but not limited to,
32 denials of access time, the failure to take access time, or
33 the failure *by either parent or other party* to abide by
34 specific terms and conditions of the order.

35 3305. All provisions of this code and of all other codes,
36 *as well as applicable case law*, shall apply to this part,
37 except as modified by this part.

38 ~~3306. (a) The Statewide Office of Family Court~~
39 ~~Services shall promulgate guidelines for a makeup~~
40 ~~custody and visitation policy which is to be implemented~~

~~1 unless the parties stipulate to a different arrangement for~~
~~2 making up denied access time, or for clarifying or~~
~~3 modifying any other terms or conditions of a custody or~~
~~4 visitation order.~~

~~5 (b) The makeup custody and visitation policy shall~~

6 3306. (a) *The policies and guidelines promulgated*
7 *pursuant to subdivision (b) of Section 3303 shall provide*
8 for all of the following consistent with the best interests
9 of the child:

10 (1) That the makeup custody or visitation time shall be
11 of substantially the same type and duration as the time
12 that was denied, to the extent practical, and that
13 preference for the makeup time shall be given to the
14 person who is denied access time.

15 (2) Education of parents so they may better
16 understand the orders, the need to comply with the
17 orders, the effects of noncompliance on the child, and
18 how to effectively communicate with each other when
19 questions or disputes as to the order arise.

20 (3) Referrals to parenting classes or counseling where
21 it is deemed necessary to help the parents learn to
22 communicate with each other as regards the child and
23 how to coparent in a healthy manner.

24 ~~(e)–~~

25 (b) Notwithstanding subdivision ~~(b)~~ (a), if changed
26 circumstances and the best interest of the child require
27 that a custody or visitation arrangement different than
28 that provided for in the current court order be
29 implemented, then either of the following ~~shall apply~~
30 *actions may be taken:*

31 (1) The parties may stipulate to the changed schedule,
32 terms, or conditions which shall then be drafted into a
33 new order which shall be filed with, and signed by, the
34 court.

35 (2) The matter ~~shall~~ *may* be referred to the
36 enforcement unit of the friend of the court who shall file
37 and request the court to set the matter for hearing either
38 on a motion to enforce or for contempt.

39 3307. (a) A person denied access time with a child, or
40 who alleges a violation of an order, may use the services

1 of the Office of the Friend of the Court. The person shall
2 give written notice to the Office of the Friend of the
3 Court in the county in which the court has jurisdiction
4 over the custody issue within 14 days of the alleged denial
5 or violation, and the Office of the Friend of the Court shall
6 keep an accurate record of all alleged custody and
7 visitation arrears and violations reported to it.

8 (b) When a denied access time or violation of an order
9 is alleged, the friend of the court shall give to the parent
10 or person alleged to have denied the time with the child
11 *or to have violated the order*, within 10 days after receipt
12 of the notice of denied access time *or violation of the*
13 *order* required by subdivision (a), a notice that shall
14 contain the following statement in boldface type of not
15 less than 12 points:

16 ~~“FAILURE TO RESPOND IN 14 DAYS TO THE~~
17 ~~OFFICE OF THE FRIEND OF THE COURT LISTED~~
18 ~~BELOW SHALL BE CONSIDERED AS AN~~
19 ~~AGREEMENT THAT CUSTODY OR VISITATION~~
20 ~~TIME (ACCESS TIME) WITH THE NAMED CHILD~~
21 ~~OR CHILDREN HAS BEEN DENIED, OR THAT SOME~~
22 ~~PROVISION OF THE CUSTODY OR VISITATION~~
23 ~~ORDER WAS VIOLATED. IN SUCH AN INSTANCE,~~
24 ~~MAKEUP TIME WILL BE REQUIRED. THE FAILURE~~
25 ~~TO PROVIDE MAKEUP TIME, THE CONTINUED~~
26 ~~DENIAL OF COURT-ORDERED ACCESS TIME, OR~~
27 ~~THE VIOLATION OF THE ORDER WILL RESULT IN~~
28 ~~THE FILING OF EITHER AN ACTION FOR~~
29 ~~CONTEMPT OR A MOTION TO ENFORCE THE~~
30 ~~ORDER AND MAY RESULT IN A MODIFICATION OF~~
31 ~~THE CUSTODY OR VISITATION ORDER.~~

32 *“FAILURE TO RESPOND IN 14 DAYS TO THE*
33 *OFFICE OF THE FRIEND OF THE COURT LISTED*
34 *BELOW MAY RESULT IN FURTHER ACTION BY THE*
35 *FRIEND OF THE COURT. THIS ACTION MAY*
36 *INCLUDE FURTHER MEDIATION OR THE FILING*
37 *OF A MOTION TO ENFORCE OR A MOTION FOR*
38 *CONTEMPT AND MAY RESULT IN A*
39 *MODIFICATION OF THE CUSTODY OR VISITATION*
40 *ORDER.*

1 IF YOU DISAGREE THAT THE STATED ACCESS
2 TIME WAS DENIED OR THAT THE ORDER WAS
3 VIOLATED, OR YOU BELIEVE THAT THE DENIAL
4 OF ACCESS TIME OR VIOLATION OF THE ORDER
5 WAS NECESSARY FOR THE BEST INTEREST OF
6 THE CHILD OR CHILDREN, YOU MUST NOTIFY
7 THE OFFICE OF THE FRIEND OF THE COURT IN
8 WRITING WITHIN 14 DAYS OF THE DATE LISTED
9 ON THIS NOTICE. UPON RECEIPT OF THE
10 WRITTEN OBJECTION, AN APPOINTMENT FOR
11 MEDIATION WILL BE SET BY THE FRIEND OF THE
12 COURT TO ATTEMPT TO MEDIATE THE ISSUE,
13 UNLESS YOU AND THE OTHER PARENT OR
14 PERSON RESOLVE THIS DISPUTE THROUGH
15 INFORMAL MEETINGS OR MEDIATION OTHER
16 THAN WITH THE FRIEND OF THE COURT.

17
18 THE FAILURE TO COME TO AN AGREEMENT
19 EITHER INFORMALLY OR THROUGH MEDIATION
20 WITH THE FRIEND OF THE COURT WILL RESULT
21 ~~IN THE ENFORCEMENT UNIT OF THE FILING BY~~
22 *IN THE FILING BY THE ENFORCEMENT UNIT OF*
23 THE FRIEND OF THE COURT OF A MOTION TO
24 ENFORCE OR AN ACTION FOR ~~CONTEMPT.~~
25 *CONTEMPT.*

26 *YOU HAVE THE RIGHT TO CONSULT WITH AN*
27 *ATTORNEY REGARDING YOUR RIGHTS AND*
28 *OBLIGATIONS IN THESE MATTERS. IF AN ACTION*
29 *FOR CONTEMPT IS BROUGHT AGAINST YOU AND*
30 *THE COURT DETERMINES THAT YOU CANNOT*
31 *AFFORD AN ATTORNEY, AN ATTORNEY WILL BE*
32 *APPOINTED BY THE COURT TO REPRESENT YOU.*"

33
34 (c) If the friend of the court first notifies the parent or
35 person alleged to have denied access time or violated an
36 order by telephone, the required written notice may be
37 sent by regular mail. If no telephone notification is given,
38 then the notice shall be sent by first-class mail
39 return-receipt requested.

(d) If the parent or person who is alleged to have denied access time or violated an order makes a timely reply contesting the alleged denial or violation, an appointment for mediation of the issue shall be set with the family court services friend of the court. The mediation shall be conducted as provided for in Chapter 11 (commencing with Section 3160) of Part 2, and any other applicable provisions of this code.

(e) If the parties do not resolve the issue at mediation, the family court services friend of the court shall notify the enforcement unit of the friend of the court, who shall request the court to set the matter for hearing, either on a motion to enforce or a contempt action, and shall give notice to both parties and the family court services friend of the court of the date, time, and place of the hearing. The enforcement unit of the friend of the court shall not represent any party.

(f) Notwithstanding subdivision (e), the enforcement unit of the friend of the court shall have the same discretion not to pursue an action to enforce an alleged violation of an order or denial of access time as a district attorney has not to pursue an enforcement action for an alleged violation of a child support order.

(g) The provisions of law generally applicable to motions and contempt actions in family law matters shall be applicable to the motion to enforce or a contempt action filed by the enforcement unit of the friend of the court pursuant to this part, including the requirement of personal service of the contempt citation, except as specifically modified by this part.

3308. If a motion to enforce is filed under this part and the court finds that there has been a denial of access time or other violation of the order, the court may do one or more of the following:

(a) Require additional terms and conditions consistent with the court's custody or visitation order, order the parties to attend parenting classes or counseling, or make other orders as the court deems necessary in the best interests of the child.

1 (b) Modify the order to meet the best interests of the
2 child.

3 (c) Order that makeup access time be provided to
4 take the place of the wrongfully denied ~~visitation~~ access
5 time.

6 (d) Set the matter for a de novo hearing on contempt.

7 (e) Make any other orders the court deems
8 appropriate.

9 3309. (a) If a contempt action is filed,
10 notwithstanding Section 1218 of the Code of Civil
11 Procedure *and Section 293 of this code*, if the court finds
12 that a parent or other person is in contempt of the custody
13 or visitation order, the court may do one or more of the
14 following:

15 (1) Require additional terms and conditions consistent
16 with the court's custody or visitation order, order the
17 parties to attend parenting classes or counseling, or make
18 other orders as the court deems necessary in the best
19 interests of the child.

20 (2) Modify the order to meet the best interests of the
21 child.

22 (3) Order that makeup access time be provided to
23 take the place of the wrongfully denied visitation.

24 (4) Commit the parent or person who wrongfully
25 denied access time to community service or county jail as
26 provided by subdivision (c) of Section 1218 of the Code
27 of Civil Procedure *and Section 293 of this code*.

28 (b) Notwithstanding subdivision (a), where a person
29 has been found in contempt of a custody or visitation
30 order on a second or subsequent occasion, the court shall,
31 in addition to providing makeup time, or any other relief
32 provided, commit the offending person to community
33 service or county jail as provided by subdivision (c) of
34 Section 1218 of the Code of Civil Procedure *and Section*
35 *293 of this code*.

36 3310. It is a defense to a denial of access time or
37 violation of an order if the court finds that the denial or
38 violation was necessary in the best interests of the child
39 or children and the person or persons denying the access
40 time or violating the order had no other reasonable

1 recourse. If the court finds that the defense under this
2 section applies, the court shall state the specific factors on
3 which it has based its findings in writing or on the record.

4 3311. (a) Where a party has made repeated
5 allegations of denials of access time or violations of court
6 orders within a 6-month period, the court shall determine
7 whether the allegations are frivolous or made for the
8 purpose of harassment or whether the allegations are
9 founded and indicate an unwillingness by one party to
10 abide by the court's orders. The court shall then consider
11 what action, including, but not limited to, a modification
12 of the current orders, is necessary to provide relief to the
13 party who has been the subject of the frivolous or
14 harassing allegations or the continued disobedience of the
15 court's orders.

16 (b) *Notwithstanding subdivision (a), any time a court*
17 *finds that an action was brought pursuant to this part*
18 *which was unfounded or frivolous or made primarily for*
19 *the purpose of harassment, the court shall order sanctions*
20 *against the party bringing the action in an amount the*
21 *court deems sufficient to deter the conduct of that party,*
22 *as well as attorney's fees and costs as provided by Section*
23 *271, if appropriate.*

24 3312. (a) The agencies administering the Friend of
25 the Court program under subdivision (a) of Section 3302
26 shall maintain records of cases handled by the friend of
27 the court for the purpose of evaluating the effectiveness
28 of the program. Information that shall be obtained and
29 maintained shall include, but need not be limited to, the
30 following:

31 (1) The number of cases in which access time is denied
32 in each county and the total number of cases for the state.

33 (2) The number of cases in which access time is denied
34 by the same party on more than one occasion and the
35 number of cases in which the issue of denial of access time
36 is brought before the court on more than one occasion.

37 (3) The number of cases in which an order is violated
38 other than by a denial of access time in each county and
39 the total number for the state.

1 (4) The number of cases in which an order is violated
2 in the same or similar manner by the same party on more
3 than one occasion and the number of cases in which the
4 issue of a violation of the order is brought before the court
5 on more than one occasion.

6 (5) The general reasons stated for the denial of access
7 time or violation of the order.

8 (6) The number of cases in which the parties reached
9 a stipulated agreement through mediation, the number
10 in which motions to enforce were filed, and the number
11 in which actions for contempt were filed, broken down by
12 county and the total number for the state.

13 (7) The number of cases in which a motion to enforce
14 or an action for contempt were filed in which the court
15 modified the order, the number in which the court found
16 an affirmative defense, the number in which the court
17 referred the parties out for parenting or counseling
18 services, and the number in which a court found a party
19 in contempt and required community service or jail time
20 for the contempt.

21 (b) The statistics and information required by this
22 section shall be made available annually, upon request, to
23 the Legislature or other interested persons.

24 3313. Funding for any additional duties imposed on
25 governmental agencies by this part shall be provided by
26 federal funds received by the state pursuant to the federal
27 Personal Responsibility and Work Opportunity
28 Reconciliation Act of 1996 (P.L. 104-193).

29 3314. This part shall become operative only if federal
30 funds are made available for its implementation. No state
31 funds shall be allocated for the purposes of this part.

32 SEC. 5. Notwithstanding Section 17610 of the
33 Government Code, if the Commission on State Mandates
34 determines that this act contains costs mandated by the
35 state, reimbursement to local agencies and school
36 districts for those costs shall be made pursuant to Part 7
37 (commencing with Section 17500) of Division 4 of Title
38 2 of the Government Code. If the statewide cost of the
39 claim for reimbursement does not exceed one million

1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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